



INTERNATIONAL TRADE COMMISSION
[Investigation No. 337-TA-1237]

Certain Cloud-Connected Wood-Pellet Grills and Components Thereof; Notice of a Commission Determination to Issue a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission, having previously found a violation of section 337, has determined to issue a limited exclusion order (“LEO”) directed against infringing cloud-connected wood-pellet grills and components thereof imported by or on behalf of respondent GMG Products LLC (“GMG”) of Lakeside, Oregon and a cease and desist order (“CDO”) directed against GMG. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2021, based on a complaint filed on behalf of Traeger Pellet Grills LLC (“Traeger”) of Salt Lake City, Utah. 86 FR 129-30 (Jan. 4, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cloud-connected wood-pellet grills and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,218,833

(“the ’833 patent”) and 10,158,720 (“the ’720 patent”). The Commission’s notice of investigation named GMG as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation.

The Commission previously found that Traeger has satisfied the economic prong of the domestic industry requirement with respect to the ’833 and ’720 patents. *See* Order No. 26 (Aug. 10, 2021), *unreviewed by* Comm’n Notice (Sept. 9, 2021).

On September 3, 2021, the former chief administrative law judge (“CALJ”) issued an initial determination (“ID”) (Order No. 28) granting in part GMG’s motion for summary determination of non-infringement as to the ’833 patent and terminating that patent from the investigation. *See* Order No. 28 (Sept. 3, 2021). On October 6, 2021, the Commission determined to review Order 28. Comm’n Notice (Oct. 6, 2021). On October 28, 2021, the Commission determined, on review, to affirm with modification the ID’s finding of non-infringement as to the ’833 patent. *See* Comm’n Notice (Oct. 28, 2021). Accordingly, the ’833 patent was terminated from the investigation.

On December 6, 2021, the former CALJ issued a final ID finding a violation of section 337 based on infringement (*i.e.*, direct, contributory, and induced) of asserted claims 1 and 2 of the ’720 patent. The ID further finds that: (1) Traeger has satisfied the technical prong of the domestic industry requirement; (2) GMG is estopped from challenging the validity of the ’720 patent based on the prior art MAK and Fireboard systems; (3) the prior art MAK and Fireboard systems do not render the asserted claims of the ’720 patent invalid due to anticipation under 35 U.S.C. 102(a) or obviousness under 35 U.S.C. 103; and (4) the ’720 patent is not unenforceable due to inequitable conduct. The former CALJ recommended, should the Commission find a violation, the issuance of an LEO directed to GMG’s infringing products and a CDO directed to GMG, and requiring a bond in the amount of 53.1 percent of the entered value for importation of infringing articles during the period of Presidential review.

On December 20, 2021, GMG petitioned for review of certain aspects of the final ID.

Specifically, GMG petitioned for review of the ID's findings regarding claim construction, infringement, the technical prong of the domestic industry requirement, validity, and enforceability with respect to the '720 patent. On December 28, 2021, Traeger filed a response in opposition to GMG's petition for review.

The Commission received no submissions from the public in response to its *Federal Register* notice requesting comments on the public interest should the Commission find a violation of section 337. 86 FR 70860-61 (Dec. 13, 2021). Traeger and GMG did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 C.F.R. 210.50(a)(4)).

On March 8, 2022, the Commission determined not to review the final ID's finding of a violation of section 337 with respect to claims 1 and 2 of the '720 patent, thus adopting that finding. See Comm'n Notice (Mar. 8, 2022); 87 FR 14288-89 (Mar. 14, 2022); see 19 CFR 210.42(h)(2). The Commission also requested written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding. *Id.*

On March 22, 2022, Traeger and GMG each filed a brief on remedy, the public interest, and bonding. On March 29, 2022, the parties filed their reply briefs. The Commission received no other submissions.

Having reviewed the record in this investigation, including the parties' briefing, the Commission has determined that the appropriate form of relief is an LEO prohibiting the entry of unlicensed cloud-connected wood-pellet grills and components thereof that infringe one or more of claims 1 and 2 of the '720 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, GMG or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns (collectively, "the covered articles"). The Commission has also determined to issue a CDO prohibiting GMG from conducting, or aiding and abetting, any of the following activities in the United States:

importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for cloud-connected wood-pellet grills and components thereof that infringe one or more of claims 1-2 of the '720 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d)(1) and 337(f)(1) (19 U.S.C. 1337(d)(1) and 1337(f)(1)) do not warrant denying relief. Finally, the Commission has determined that a bond in the amount of 53.1 percent of the entered value of the covered articles is required during the period of Presidential review pursuant to 19 U.S.C. 1337(j). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission issues its opinion herewith setting forth its determinations on the remedy, bonding and public interest issues. The investigation is terminated.

The Commission vote for this determination took place on May 12, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 12, 2022.

Lisa Barton,
Secretary to the Commission.

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